IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 42 OF 1995

Prabhakar Dattu Darade,
Age 31 years, R/o. Satyagaon,
Tq. Yeola, Dist. Nasik ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. R. Bhosale, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE JUDGMENT : 16.09.2004

DATE OF PRONOUNCING THE JUDGMENT : 29.09.2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant (original accused No.1) challenges the judgment and order dated 09.01.1995 passed by the learned II Additional Sessions Judge, Nasik in Sessions Case No.169 of 1994. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 498-A and 306 of I.P.C. For the offence under Section 498-A of I.P.C. the appellant has been convicted for two years R.I.

and to pay fine of Rs.500/- i/d R.I. for three months. For the offence under Section 306 of I.P.C., the appellant has been convicted for five years R.I. and to pay fine of Rs.1,000/- i/d R.I. for six months. The learned Sessions Judge directed that both the sentenced were to run concurrently.

2. It may be mentioned here that alongwith the appellant four other co-accused i.e. Dattu Govind Darade (father of the appellant), Jijabai Dattu Darade (mother of the appellant), Dadabhau Dattu Darade (younger brother of the appellant) and Kamalabai Dattu Darade (sister of the appellant) were also charged. They were accused Nos. 2, 3, 4 and 5 respectively. All these four accused persons were acquitted by the learned Sessions Judge of the offences charged i.e. Section 498-A and 306 r.w. 34 of I.P.C.

3. The prosecution case briefly stated is as under:-

. The appellant and his family members were residing at Satyagaon, Tq. Yeola, Dist. Nasik. The appellant was the husband of deceased Shobha. Deceased Shobha was the daughter of P.W.3 Kisan Baburao Bodake, resident of Saikheda, Tq. Niphad,

Dist. Nasik. About 7/8 months prior to the incident, i.e. in July 1993 Shobha was married with the appellant at Saikheda. At the time of marriage of Shobha, her father P.W.3 Kisan Bodake has paid Rs.28,000/- as dowry to the appellant. After the marriage, Shobha resided with her husband at Satyagaon. When Shobha resided with the appellant at Satyagaon, demand was made of Rs.10,000/- to Shobha for purchase of buffaloes by her husband. During the visit to Saikheda, Shobha disclosed this to her father P.W.3 Kisan Bodake, her brother P.W.4 Suresh Bodake and her mother P.W.6 Janabai Bodake. Shobha also informed them that she was being beaten by the appellant. During her visit Shobha specifically told her father, brother and mother that the family members of the appellant told her that she would not reside with them if she could not bring Rs.10,000/-. Shobha was sent back to her matrimonial house and the accused was convinced that he should not ill-treat Shobha. However, again ill-treatment of Shobha started and she was asked to bring Rs.10,000/-. Shobha was educated upto 8th Std. Shobha sent a letter to her father P.W.3 Kisan Bodake. The said letter i.e. post card is on record and it is at Exh.25. The said letter was sent one month prior to the incident. On receipt of letter, P.W.3 Kisan Bodake sent his son P.W.4 Suresh and his younger

brother Ramnath to Satyagaon to meet Shobha. Shobha told them that she was being harassed by the appellant on account of demand of Rs.10,000/-. Some days thereafter, the appellant came to the house of the complainant at Saikheda, the appellant demanded money to him saying that he was in difficulty. P.W.3 Kisan Bodake paid Rs.1,000/- to him and asked him to wait for some days. He assured the appellant that after the sale of onions he would make further payment. The appellant then went to Satyagaon after taking Rs.1,000/- from P.W.3 Kisan.

. Some days thereafter, P.W.3 Kisan received a telephone call from the Police Patil at about 9.00 a.m. Call was received by his friend Balaji. Police Patil told that Shobha had died. Balaji conveyed the message to Kisan. On receiving the message P.W.3 Kisan alongwith his wife, son and brother went to Satyagaon by truck. He found dead body of Shobha at the bank of Godavari left canal. At that time police were recording the inquest panchanama. The police showed him the dead body of Shobha. There were some marks of burn injuries and there were also some marks which suggested beating on the dead body of Shobha. On seeing injuries on the dead body of Shobha, the complainant P.W.3 Kisan was convinced that accused had harassed

Shobha and therefore he filed the complaint (Exh.26) in Yeola police station.

. Dead body of Shobha was sent for post mortem. P.W.1 Dr. Dnyaneshwar Lokhande conducted post mortem on the dead body of Shobha. He found some burn injuries and other injuries on the dead body of Shobha. The cause of death was ascertained to be asphyxia due to drowning. After completion of investigation, charge sheet came to be filed.

4. In due course the case was committed to the Court of Sessions. The appellant alongwith four accused mentioned in para 2 came to be charged under Sections 498-A, 306 r.w. 34 of I.P.C. The defence of the accused is that of denial and false implication. The defence of the appellant further is that deceased Shobha died an accidental death that is, she slipped into the canal by mistake and thus she drowned. During the course of trial, the prosecution has examined in all 10 witnesses. After going through the evidence of the said witnesses, accused Nos. 2 to 5 came to be acquitted as stated earlier. However, the appellant came to be convicted for the offence Under Sections 498-A and 306 of I.P.C. and sentenced as stated in para 1 of this judgment. Hence, this appeal.

5. I have heard Shri. Bhosale, the learned advocate for the appellant and Shri. Shitole the learned A.P.P. for the respondent. I have also perused the entire evidence as well as the judgment and order passed by the learned Sessions Judge. After giving my anxious consideration to the material on record, I am constrained to observe that the appeal deserves to be dismissed.

6. It is not disputed that the dead body was found flouting in Godavari left canal at Satyagaon. Medical certificate (Exh.13) clearly shows that the cause of death of Shobha was due to drowning. The said certificate is issued by Dr. Lokhande and Dr. Jadhav. P.W.1 Dr. Lokhande has conducted post mortem on the dead body of deceased. He found following injuries on the dead body of Shobha.

i) Burn injury over abdomen insupra umbilical region, transversed, 5" x 2" size, reddish colour involving skin which peeled out exposing subcutaneous tissue red line of demarcation present at margins.

ii) Burn injury present over left

shoulder and left upper arm on anterior aspect, right upper arm on anterior aspect in upper 1/3 part, left thigh on anterior aspect in middle 1/3 part, both lower legs on anterior aspect in middle and lower part, involving the skin, skin over that part is intact with hairs. Skin peels out after pressing with fingers and subcutanceous tissues beneath it is whitish with demarcated reddish margins between involved and true skin. No blisters present.

iii) Abrasion over base of left index finger on posterior aspect 2 x 1cm reddish margins with clotted blood present at the site.

. According to P.W.1 Dr. Lokhande these injuries were caused within two days before the post mortem was conducted. Dr. Lokhande also found that Shobha was about 6 to 8 weeks pregnant.

7. On behalf of the appellant it was submitted that there is no material to show that Shobha

committed suicide. Panch witness relating to the spot near canal was relied upon to show that the bank of canal was sloping and Shobha could have slipped into the canal accidentally and got drowned. Reliance was also placed on the evidence of Investigating Officer P.W.7 P.S.I. Khatal wherein two persons have stated that in the morning i.e.at 7.00 a.m. on the date of the incident Shobha has come to them and had made enquiry about labour charges and thereafter, she went towards canal. It was submitted that this conduct on the part of Shobha shows that she was in fit mental condition and she was not in a mentally upset condition so as to commit suicide. It is submitted that therefore, it is clear that Shobha slipped into the canal due to accident and due to this she accidentally got drowned.

8. In the context of the above submissions, it is pertinent to note that P.W.3 Kisan Bodake, father of Shobha, has stated that Shobha knew how to swim. The canal in question was only 9 feet in depth. It was about 30 feet wide. Looking to the fact that Shobha knew how to swim, if she had fallen accidentally into the water she would have swam to the side of canal and saved herself. Thus, there is no merit in the theory that Shobha slipped into the canal and she accidentally got drowned. It is

not the prosecution case that it is a case of homicidal death. From the evidence on record it is not a case of accidental death. In such case looking to the background of constant demand, ill-treatment and harassment to Shobha at the hands of the accused, it appears that Shobha was fed up and she jumped into the canal with an intention to end her life. One other aspect to be taken into consideration is that Shobha was 6 to 8 weeks pregnant at the time of the incident. Normally when a woman is pregnant, she would not commit suicide unless she is driven to take the extreme step. If all was well between Shobha and the accused there would have been no reason for Shobha to commit suicide.

9. It is submitted on behalf of the appellant that there was no proximate cause which led Shobha to commit suicide. In this connection it would be pertinent to note the evidence of Dr. Lokhande. P.W.1 Dr. Lokhande conducted the post mortem on the dead body of Shobha. He has specifically stated that there were burn injuries as well as other injuries on the body of Shobha. These burn injuries were caused just prior to the death of Shobha. Obviously no burn injuries could have been caused by falling in the canal. Therefore, it follows that these burn injuries could only have

been caused in the matrimonial home of Shobha. It is pertinent to note that these burn injuries are not in one place on the body of Shobha nor are the burn injuries consistent with injuries received while cooking. These burn injuries are spread all over the body i.e. on the left shoulder, left upper arm on anterior aspect, right upper arm on anterior aspect in upper 1/3 part, left thigh, both lower legs on anterior aspect in middle and lower part and over abdomen. From the burn injuries which are spread all over the body of Shobha, the only possible conclusion is that it was the appellant who had caused these burn injuries to Shobha. The earlier harassment of Shobha was only in the nature of beating on account of non fulfilment of demand, thereafter, the ill-treatment appears to have escalated to the extent of causing burn injuries to Shobha. This appears to be the cause for Shobha to commit suicide. It is pertinent to note that even in the usual mode of dress of a lady residing in a village and also from the clothes which were on the body of Shobha at the time of her death all these burn injuries on the body of Shobha would not be easily visible to any other person, therefore, there is no question of any witness stating about these burn injuries. It appears that burn injuries were given on such part of the body that it would not be possible for

someone else to see them. I have already observed that the burn injuries are not such as to be caused while cooking. From the evidence on record it is clear that only the appellant and Shobha were residing together, the other family members of the appellant were residing separately. In such circumstances, the only conclusion is that the appellant caused these burn injuries to Shobha. This is the reason which compelled her to commit suicide.

10. Shri. Bhosale, the learned advocate for the appellant has submitted that the prosecution case that there were burn injuries on the body of Shobha cannot be believed. In support of this contention he has placed reliance on the inquest panchanama (Exh.20). He has submitted that the inquest panchanama shows that there were no injuries on the body except one injury near thumb of the left hand. Shri. Bhosale, has submitted that the inquest panchanama does mot mention any burn injuries on the body of Shobha. In this connection it is to be noted that the inquest panchanama is not drawn by any doctor or any person having any kind of medical background but it is drawn by a lay person.

. In the inquest panchanama it is specifically stated that on the shoulder and stomach of the dead

body the skin has peeled off and the white skin below was visible. These are the very injuries which P.W.1 Dr. Lokhande has stated to be burn injuries. As far as the other burn injuries are concerned, P.W.1 Dr. Lokhande has stated that the skin is intact but it peels out after pressing it with the fingers and subcuttanceous tissues beneath it is whitish with demarcated reddish margins between involved (peeled skin) and true skin. Hence, only because there is no specific mention in the inquest panchanama that there were burn injuries on the body of Shobha, the prosecution case that Shobha sustained burn injuries prior to her death cannot be disbelieved.

11. The prosecution has examined P.W.3 Kisan Bodke, P.W.4 Suresh Bodke and P.W.6 Janabai Bodake who were father, brother and mother of Shobha respectively. All these witnesses have stated about demand by the accused and ill-treatment and harassment by the appellant to Shobha. P.W.3 Kisan who is the father of deceased Shobha has stated that the marriage of Shobha with the appellant had taken place about 6 months prior to the incident. At the time of marriage he paid Rs.28,000/- to the appellant as a dowry. After marriage, Shobha went to Satyagaon and started residing there with the appellant. In the matrimonial house demand was

made from Shobha to bring Rs.10,000/- to purchase buffaloes. Shobha was told that if she did not bring Rs.10,000/- she should not reside with the accused. Shobha had sent a letter to P.W.3 Kisan wherein she had mentioned about harassment in relation to demand of Rs.10,000/-. Thereafter, Shobha came to the village of Kisan at Saikheda and told Kisan about the demand made by the accused and the harassment and that she was beaten on that count by the appellant. Shobha also told Kisan that she has been sent by the accused specifically to bring money from him (Kisan Bodke). Shobha also told Kisan that she has been beaten by the accused in relation to this demand. At that time Kisan could not give Rs.10,000/- to the accused. Thereafter Shobha went back to Satyagaon. Thereafter, again accused started harassing Shobha stating that she should bring Rs.10,000/-. Shobha had studied upto 8th Std. Shobha again sent a letter to her father. The said letter (Exh.25) written by Shobha was addressed to Kisan. It was sent about a month prior to the incident. After receipt of the letter, Kisan sent his son P.W.4 Suresh and younger brother Ramnath to Satyagaon. They met Shobha at Satyagaon. Shobha told them that she was being harassed in relation to the demand of Rs.10,000/- by the accused. Four to five days after his son and brother met to Shobha,

accused came to Saikheda with Shobha and demanded money from P.W.3 Kisan saying that he was in difficulty. Kisan paid Rs.1,000/- to the appellant and asked him to wait for some days and he assured him that after sale of onion crop he would make further payment. Some days thereafter, Kisan received a message by telephone that his daughter Shobha had died. They went to Satyagaon and they saw the dead body of Shobha on the bank of Godavari left canal. Police were recording the inquest panchanama at that time. Kisan Bodke saw some marks of burning as well as some marks of injuries on the dead body of Shobha which suggested beating. On seeing the injuries on the dead body of Shobha, Kisan Bodke was convinced that the accused had harassed Shobha and he had lodged a complaint at Yeola Police station.

12. The only discrepancy which has been brought on record in the evidence of Kisan Bodke is that in his examination in chief Kisan Bodke has stated that 4 to 5 days after his son and brother had met Shobha at Satyagaon, the appellant came to village Saikheda and demanded money from him. Whereas in the F.I.R. he has stated that 2 to 3 months after he sent his son and brother to Satyagaon, the appellant Prabhakar and Shobha came to Saikheda and demanded money from him. I am of the opinion that

the evidence of this witness cannot be discarded only on the basis of this discrepancy. This discrepancy is not such as to go to the root of the prosecution case. There is no inconsistency on the aspect that the accused made a demand for money, the only inconsistency is relating to the date. Nothing else has been elicited in the cross examination of this witness so as to disbelieve his testimony.

13. The prosecution has also examined Suresh Bodke who is the brother of Shobha. He has stated that Shobha was married with the appellant in July 1992. At the time of marriage Rs.28,000/- was given to the appellant as a dowry. After the marriage Shobha started residing at Satyagaon with the appellant. This witness has further stated that the appellant had demanded Rs.10,000/- from Shobha and he asked Shobha not to stay with him if she could not bring Rs.10,000/-. Therefore, Shobha had come to their house alongwith appellant. At that time the appellant demanded Rs.10,000/- through Shobha. At that time they paid Rs.1,000/- to the appellant. They assured the appellant that the rest of the amount would be paid after harvest of onions. Thereafter the appellant and Shobha went back. Suresh has further stated that even after taking Rs.1,000/- from them, Shobha was subjected

to harassment and beaten by her husband. Shobha was educated upto 9th Std. She sent a letter to them and informed them about her plight. The said letter is at Exh.25. The letter is in the hand writing of Shobha. On receipt of this letter he and his uncle Ramnath went to Satyagaon. They met Shobha at Satyagaon. Both of them persuaded the appellant not to harass Shobha. They told the appellant that they could give money after the harvest of onion crop. After 2/3 days again Shobha and the appellant came to Saikheda. Again they paid Rs.1,000/- to the appellant and assured that the rest of the amount would be given within 1-2 months, then Shobha and the appellant went back to Satyagaon.

14. Suresh Bodke has stated that on 26.3.94 they got phone call informing them that Shobha had died. They went to Satyagaon and saw the dead body of Shobha by the side of canal. There were some marks of burning as well as of beating on the dead body of Shobha. In the cross examination of this witness the only discrepancy which has been brought on record is that he had not stated in his police statement that within 2/3 days Shobha and the appellant came to Saikheda and he paid Rs.1,000/- to the appellant. The discrepancy is relating to only 2-3 days and not in respect of payment of

Rs.1,000/- to the appellant. So also there is a discrepancy in relation to the period of time when the appellant and Shobha came to their house at Saikheda after receipt of letter (Exh.25). It is pertinent to note that there is no discrepancy in relation to the demand made by the appellant or taking of money by him from P.W.3 Kisan Bodke. Nothing more has been brought out in the cross examination of this witness so as to discredit his testimony. The discrepancy relating to the period of time are minor discrepancies and do not go to the root of the prosecution case. It is to be borne in mind that Kisan Bodke and Suresh Bodke are rustic villagers, therefore, not much importance can be attached to discrepancies in their evidence relating to time. From the evidence of witness Suresh it is clear that the appellant had demanded money and ill-treated Shobha and due to this demand, Shobha had sent a letter to her father in relation to the ill-treatment and that the appellant had come to the parental house of Shobha and demanded money and some part of the amount demanded was even given to him.

15. Evidence of Janabai Bodke i.e. the mother of Shobha is on the same lines as that of P.W.4 Suresh Bodke. From the evidence of these three witnesses i.e. P.W.3 Kisan Bodke, P.W.4 Suresh Bodke and

P.W.6 Janabai Bodke it is proved that the accused made a demand from the father of Shobha and he ill-treated Shobha on that count. The appellant had personally gone to the parental house of Shobha and he has demanded money and Kisan Bodke had handed over money to him with a promise that the remaining money would be paid to him after sale of onion crop.

16. Shri. Bhosale, the learned advocate for the appellant has submitted that the evidence in relation to the demand, ill-treatment and harassment is common to all the accused who were facing trial. He has submitted that the learned Sessions Judge has acquitted original accused Nos. 2 to 5 on the basis of the same evidence and he has convicted the appellant on the basis of the very same evidence. In support of this contention, the learned advocate for the appellant has placed reliance on the decision of **Bansiya and another Vs. State of Rajasthan reported in 1996 Cri.L.J. 1393. In** the said decision it is observed that in case of acquittal of one accused and conviction of the other accused on the same evidence, the conviction is liable to be set aside. On perusal of the evidence I do not find any merit in this submission. It has been brought on record that the original accused Nos. 2 to 5 were residing

separately from the appellant and Shobha. It was the appellant alone and none of the other accused Nos. 2 to 5 had gone to the parental house of Shobha and demanded money. None of the other accused persons were present at that time. Moreover, from the letter (Exh.25) written by Shobha it is seen that Shobha had a grievance only against the appellant. Thus, it cannot be said that the evidence against the appellant and the other accused who have been acquitted is the same.

17. Shri. Bhosale has argued that the said letter (Exh.25) cannot be taken into consideration as no panchanama was drawn in relation to the production or seizure of the said letter. However, I have no reason to doubt that the letter (Exh.25) was not written by Shobha even though no seizure panchanama was drawn. There are postal marks on the letter. The address and the name of the sendor in letter as Shobha as well as the name of the addressee clearly establishes that the letter was written and sent by Shobha to her father. The hand writing on the said letter has been identified by the witnesses to be that of Shobha. This letter itself proves beyond a shadow of doubt that Shobha was being ill-treated and harassed by her husband. Letter (Exh.25) cannot be said to be a concocted document but it is in fact a letter sent by Shobha to her father

complaining about harassment to her by her husband in relation to demand of money. In fact there is a reference to this letter in the F.I.R. (Exh.26). Thus the mere fact that P.S.I. did not record seizure panchanama in relation to the letter does not mean that Shobha had not sent the said letter (Exh.25).

18. The said letter (Exh.25) is dated 26.2.94 and the incident in the present case had taken place on 26.3.94. Thus, it is clear that the letter was written by Shobha one month prior to her committing suicide. In Exh.25 Shobha has mentioned that in the night she was harassed by her husband, she was beaten by her husband and she was also driven out from the house. In the said letter she has further mentioned that her husband demanded Rs.1400/- from her towards bill of the house and he complained that she was not bringing grains from her parents. This conduct on the part of the appellant of beating his wife and driving her out of the house amounts to cruelty. Shri. Bhosale the learned advocate for the appellant argued that asking of financial assistance from his father-in-law or grains from his father-in-law would not amount to illegal demand on the part of the appellant. However, the case against the appellant is not limited to asking for financial assistance or

demand for grains. The material on record clearly shows that the appellant ill-treated his wife, beat her and had also driven her out of the house, which conduct certainly amounts to cruelty.

19. Shri. Bhosale, the learned advocate for the appellant has submitted that the statement of various neighbours have been recorded, however, independent witnesses like the neighbours have not been examined and hence, adverse inference deserves to be drawn against the prosecution. It is well known that in matrimonial matters, neighbours and third persons are not willing to interfere much less testify against any of the sides during the trial. In such case no adverse inference can be drawn against the prosecution.

20. One cannot loose sight of the fact that Shobha had committed suicide within seven years of her marriage, in such case presumption under Section 113(A) of the Evidence Act would be drawn against the appellant. Presumption under Section 113-A is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused abetted the suicide of the deceased.

21. The evidence on record clearly shows that the

appellant beat his wife Shobha and drove her out of house. This can be termed to be conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to her life or health mental as well as physical. In the present case, the evidence clearly shows that there was harassment to Shobha on account of unlawful demand by the appellant from the father of Shobha. In such circumstances, it can be presumed that the suicide had been abetted by the appellant.

22. Shri. Bhosale has placed reliance on the decision in the case of **Sukhdeo Dagdu Thakre Vs. The State of Maharashtra reported in 1985 I.L.R. 2086.** In the said case it was held that mere quarrel or ill-treatment would not be sufficient to level the charge of cruelty. The degree of conduct of the husband must be such that it would drive wife to commit suicide or to cause grave injury or danger to her life, limb or health. This decision would not be applicable to the facts of the present case. I have already observed earlier that in the present case the degree of cruelty on the part of the appellant was such as to be covered under Section 498-A of I.P.C. In such case, the presumption of cruelty under section 113-A of Evidence Act can be drawn against the appellant.

23. Thereafter, Shri. Bhosale has placed reliance on the decision in the case of **Wazir Chand and Anr. Vs. State of Haryana reported in AIR 1989 SC 378 (P. & H.).** Shri. Bhosale has submitted that the evidence on record has not established with certainty that Shobha committed suicide and in such case accused cannot be convicted under Section 306 of I.P.C. In the present case I have already observed that the evidence on record clearly shows that it was not a case of accidental death but it was a case of suicidal death, thus, this authority is if no use to the defence.

24. Lastly, Shri. Bhosale has placed reliance on the decision in the case of **Thangappandian Vs. State by Deputy Superintendent of Police, Mettur P.S. reported in 1998 Cri. L.J. 993**. In the said case it was held that when the accused was only charged for the offence under Section 302 of I.P.C. he cannot be convicted of the offence under Section 306 and 498-A of I.P.C. However, in the present case the appellant was not charged under Section 302 of I.P.C. but he was charged only under section 306 and 498-A of I.P.C. As there is sufficient material to prove charges on both counts, the appellant has been rightly convicted by the learned Sessions Judge. In the facts and circumstances of the present case reliance on this

authority is misplaced.

25. In my view, the evidence of three witnesses P.W.3 Kisan Bodke, P.W.4 Suresh Bodke and P.W.6 Janabai Bodke and the letter Exh.25 conclusively establishes that the appellant is guilty of offences under Sections 306 and 498-A of I.P.C. For the said reasons the conviction and sentence of the appellant for the offence under Sections 306 and 498-A of I.P.C. is confirmed and the appeal is dismissed. The appellant is on bail. The appellant shall surrender to his bail within eight weeks from today.